

# Chapter

## ONE

### *The Role of the Paralegal*

#### ▶ THE LAWYER-PARALEGAL RELATIONSHIP

Paralegals today perform many tasks that once were performed only by lawyers, such as preparing, filing, or producing documents. Law firms have for many years realized that their practices can be more cost efficient by hiring paralegals instead of lawyers to do these and other tasks. What was true over 20 years ago is still true today:

- Under present market conditions, clients are no longer
- willing to have all the work performed at lawyers' rates.
- Associate rates that once provided a solution to the
- high cost of legal work now contribute to the problem.
- Because of this, the legal assistant profession has
- become one of the fastest growing in the nation. Lawyers
- are beginning to recognize that they will be able to produce a greater volume of legal work if they shift a larger
- portion of work to nonlawyers.<sup>1</sup>

Paralegals can enhance profitability for law firms by performing a variety of work that lawyers would otherwise do, thereby reducing costs for clients (because paralegals'

services are billed at lower rates) and increasing access to the legal system for individuals who might not otherwise be able to afford legal services.

The paralegal acts as an agent of the lawyer in regard to interaction with clients and others. As such, the paralegal owes the lawyer certain duties. Subsequent chapters will discuss these duties more fully in the context of the paralegal's function, but the general duties of an agent include the diligent and competent performance of tasks within the authority given by the principal and the avoidance of conflicts of interest. Maintaining confidentiality and communicating effectively would fall under these broad categories.

As lawyers are themselves agents (of their clients), they are subject to the same general duties. Lawyers' duties, which have been formalized into specific bodies of rules, are introduced in Chapter 2 and discussed throughout this book. Although these rules apply to lawyers and not to paralegals, paralegals as agents acting on behalf of their employers must help ensure that the rules are not violated. Model Rule of Professional Conduct 8.4 states, moreover, that "[i]t is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct . . . through the acts of another."

Consequences of rule violations usually fall upon the lawyer as the principal in the relationship, with deleterious effects on the firm and on the legal profession. However, paralegals can be held directly responsible for the unauthorized practice of law and other actions as described in later chapters.

The agency relationship between lawyer and paralegal, then, requires first and foremost that the paralegal understand the rules of conduct governing legal practice in the state where the lawyer is located. Next, the paralegal must refrain from any action that would cause a violation of the rules and mention any violation likely to occur as a result of lawyer or other staff actions.<sup>2</sup>

Thus, the relationship between lawyer and paralegal is one of shared goals and mutual responsibility. Working together, they can efficiently provide high-quality services. As members of a team, they owe certain obligations

to one another. The lawyer must delegate, supervise, and assume ultimate responsibility for the paralegal's work. The paralegal should perform tasks competently, refrain from giving legal advice or otherwise engaging in the unauthorized practice of law, and keep the lawyer informed of progress on assignments.

The role of paralegals continues to change and expand. The work performed by paralegals is varied and complex and includes both routine tasks and more substantive tasks performed under the supervision of lawyers.

The principal employers of paralegals in the private sector are law firms. Other employers include insurance companies, estate and trust departments of financial institutions, real estate firms, title insurance companies, and corporate law departments, as well as nonprofit organizations such as unions, professional and trade associations, charitable organizations, and consumer and advocacy groups. Public-sector employers include courts, legal services programs, the military, and state and local government offices, such as those of public defenders and prosecutors. The largest employer of paralegals outside the private sector is the federal government.

### ▶ WHO ARE PARALEGALS?

Paralegals are a diverse group in terms of educational background. Some enter the field directly after high school and are trained on the job. Others advance to the paralegal ranks from clerical or secretarial backgrounds. Still others choose to obtain a paralegal certificate or a degree before beginning their careers. Many career changers are entering the field as well and securing postbaccalaureate credentials.

Paralegals in the United States are not licensed; jurisdictions do not impose requirements, such as an examination or a character and fitness evaluation, before individuals may undertake paralegal responsibilities. Some states, however, have instituted voluntary registration or certification programs for paralegals.<sup>3</sup>

In addition, some legal professional associations have recommended certain academic criteria they think are essential for entry into the field.

The National Association for Legal Assistants (NALA) and the National Federation of Paralegal Associations (NFPA), the two largest national paralegal associations, have adopted definitions of the terms “paralegal” and “legal assistant” that generally follow the one developed in 1997 by the ABA Standing Committee on Legal Assistants (now the Standing Committee on Paralegals):

- A legal assistant or paralegal is a person, qualified by education, training, or
- work experience, who is employed or retained by a lawyer, law office, corpo-
- ration, governmental agency or other entity and who performs specifically
- delegated substantive legal work for which a lawyer is responsible.<sup>4</sup>

Further acknowledgment that paralegals are capable of carrying out many tasks that would otherwise be performed by a lawyer, and billed at a higher rate, came in *Missouri v. Jenkins*, a school desegregation case in which the U.S. Supreme Court allowed a separate compensation award for paralegals, law clerks, and recent law school graduates.<sup>5</sup> The Court there delineated the substantive duties paralegals perform:

- It has frequently been recognized in the lower courts that legal assistants
- are capable of carrying out many tasks, under the supervision of an attorney,
- that might otherwise be performed by a lawyer and billed at a higher rate.
- Such work might include, for example, factual investigation, including locat-
- ing and interviewing witnesses; assistance with depositions, interrogatories,
- and document production; compilation of statistical and financial data;
- checking legal citations; and drafting correspondence. Much such work lies
- in a gray area of tasks that might appropriately be performed either by an
- attorney or a legal assistant.<sup>6</sup>

As paralegals acquire greater experience and in some instances develop specialized expertise in different areas of practice, they grow increasingly more competent in performing tasks that have traditionally been performed by lawyers. Experienced paralegals are often given progressively more responsibility and subjected to less direct supervision as they gain knowledge and skills. But, because the paralegal is the agent of the lawyer, who is ultimately responsible for all of the paralegal's actions, this increased responsibility includes an obligation to understand and uphold the same high ethical standards to which the lawyer is subject.

## ◆ GROWTH OF THE PARALEGAL PROFESSION

While lawyers have employed legal secretaries or assistants for generations, it has only been since the 1960s that a clearly identifiable paralegal profession has emerged.<sup>7</sup> The rising cost of legal services threatened to exclude low-income and middle-income Americans from access to legal services, and local bar groups searched for ways to make legal services affordable while still protecting the public. The solution was the creation of a profession of specially trained paralegals.

Initially, the only training available to many of those employed as paralegals was received on the job. Paralegals entering the field today frequently are taught both legal procedure and substantive law at paralegal programs in educational institutions. These programs are offered by colleges and a variety of proprietary institutions.

The role of paralegals in delivering legal services has been steadily increasing since the late 1970s. According to the 2014–2015 *Occupational Outlook Handbook*, the U.S. Department of Labor estimates that approximately 277,000 individuals held positions as paralegals or legal assistants in 2012. The *Handbook* predicts that employment of paralegals and legal assistants will grow “17 percent between 2012 and 2022, much faster than the average for all occupations.”<sup>8</sup>

## ◆ THE ABA AND PARALEGALS

The ABA has been actively involved in supporting the paralegal profession by encouraging paralegal education and employment. Paralegals are eligible to become associate members of the ABA and are encouraged to become associates in one or more of the 30 ABA Sections and Forums. Associate status in any of these entities entitles one to all privileges of membership except the right to vote or to be an officer or council member. Associate members receive publications and participate in a variety of programs. They are also eligible to be appointed to committees of these entities.

In 1968, the ABA House of Delegates adopted a resolution creating a committee, now named the Standing Committee on Paralegals, to consider